



# UNITED STATES PATENT AND TRADEMARK OFFICE

m/

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,334	12/05/2000	Bradley S. Butler	P00424	8126

28548 7590 12/17/2003

STONEMAN LAW OFFICES, LTD  
3113 NORTH 3RD STREET  
PHOENIX, AZ 85012

EXAMINER
----------

MCCROSKY, DAVID J

ART UNIT	PAPER NUMBER
----------	--------------

3736

14

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/730,334

Applicant(s)

BUTLER ET AL.

Examiner

David J. McCrosky

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 6,7,10,11 and 39-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6,7,10,11 and 39 is/are allowed.
- 6) ☒ Claim(s) 40-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 3 July 2003 has been entered.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the handle shelf comprising a plurality of test tube apertures and at least one needle aperture (as claimed in claim 45 and described on p. 16 of the specification) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims

are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 39-63 have been renumbered 40-64.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 40-42, 44, 46-51 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Morrison et al. Morrison et al teach a test tube rack that supports a plurality of test tubes. The test tube rack is capable of supporting a spinal tap needle, stylet or needle sleeve in any of the open holes illustrated in Fig. 3. The test tube rack further comprises handles (38, 40), a top shelf (24), bottom shelf (28) and inside shelf (26).

Claims 40-46, 49-51 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Korom. The reference discloses a test tube rack that supports a plurality of test tubes. The test tube rack is capable of supporting a spinal tap needle, stylet or needle sleeve in any of the open holes illustrated in Fig. 1. The test tube rack further comprises a top shelf (11) and a bottom shelf (13) having indentations (19). The test tube rack further comprises a handle shelf (12) having a plurality of apertures. See Figs. 1 and 2.

***Claim Rejections - 35 USC § 103***

Claims 40 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strittmatter in view of Korom. Strittmatter discloses the collection of spinal fluid

using a needle, stylet and tube. See col. 2. Strittmatter does not disclose a tube rack. Korom discloses a test tube rack that supports a plurality of test tubes. The test tube rack is capable of supporting a spinal tap needle, stylet or needle sleeve in any of the open holes illustrated in Fig. 1. The test tube rack further comprises a top shelf (11) and a bottom shelf (13) having indentations (19). The test tube rack further comprises a handle shelf (12) having a plurality of apertures. See Figs. 1 and 2. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Strittmatter with a test tube rack, as taught by Korom, to provide a rack to hold the test tube.

Claims 54-58 and 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strittmatter in view of Korom and Noack. Strittmatter discloses the collection of spinal fluid using a needle, stylet and tube. See col. 2. A sterilized kit containing a needle, stylet and tube in a package is taught. See col. 4, ll. 42-55. Strittmatter does not disclose a tube rack. Korom discloses a test tube rack that supports a plurality of test tubes. The test tube rack is capable of supporting a spinal tap needle, stylet or needle sleeve in any of the open holes illustrated in Fig. 1. The test tube rack further comprises a top shelf (11) and a bottom shelf (13) having indentations (19). The test tube rack further comprises a handle shelf (12) having a plurality of apertures. See Figs. 1 and 2. Strittmatter and Korom do not teach a rack as part of a sterile kit. Noack discloses a rack as part of a pre-assembled sterile package that can be shipped as a complete unit that is ready for use. See col. 2, ll. 14-18 and ll. 25-38. It would have been obvious to one of ordinary skill in the art at the time the invention was

made to modify the system of Strittmatter with a test tube rack, as taught by Korom, and a rack as part of a sterile kit, as taught by Noack, to provide a rack to hold the test tube and to provide a sterile package that can be shipped as a complete unit that is ready for use.

Claims 54, 56 and 58-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strittmatter in view of Morrison et al and Noack. Strittmatter discloses the collection of spinal fluid using a needle, stylet and tube. See col. 2. A sterilized kit containing a needle, stylet and tube in a package is taught. See col. 4, ll. 42-55. Strittmatter does not disclose a tube rack. Morrison et al teach a test tube rack that supports a plurality of test tubes. The test tube rack is capable of supporting a spinal tap needle, stylet or needle sleeve in any of the open holes illustrated in Fig. 3. The test tube rack further comprises handles (38, 40), a top shelf (24), bottom shelf (28) and inside shelf (26). Strittmatter and Morrison et al do not teach a rack as part of a sterile kit. Noack discloses a rack as part of a pre-assembled sterile package that can be shipped as a complete unit that is ready for use. See col. 2, ll. 14-18 and ll. 25-38. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Strittmatter with a test tube rack, as taught by Morrison et al, and a rack as part of a sterile kit, as taught by Noack, to provide a rack to hold the test tube and to provide a sterile package that can be shipped as a complete unit that is ready for use.

Claim 64 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strittmatter in view of Korom and Noack as applied to claims 54, 56 and 57 above, and

further in view of Horner et al. Strittmatter, Korom and Noack disclose a kit as recited for claims 54, 56 and 57 but do not teach an aperture smaller than a tube and larger than a needle. Horner et al teach a tube holder apparatus that includes smaller apertures (176) for a triplet. The triplet aperture is sized to provide a sliding interference fit so that the triplet is held securely within the aperture. See col. 7, ll. 32-40. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the aperture of Strittmatter, Korom and Noack with the smaller aperture of Horner et al to securely hold a needle.

***Allowable Subject Matter***

Claims 6, 7, 10, 11 and 39 are allowed.

***Response to Arguments***

Applicant's arguments with respect to claims 40-53 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. McCrosky whose telephone number is 703-305-1331. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on 703-308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9302.

Art Unit: 3736

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DJM

  
MAX F. HINDENBURG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700